

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.102 pertaining to incorporation by)	PROPOSED AMENDMENT
reference)	
)	(AIR QUALITY)

TO: All Concerned Persons

1. On February 4, 2009, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 26, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) remains the same.

(2) The following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:

(a) remains the same.

(b) 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units.

(3) remains the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to specifically exempt from the incorporation by reference 40 CFR Part 60, subpart HHHH, which establishes a scheme for regulating emissions of mercury under an emission credit trading program. The U.S. Circuit Court of Appeals for the District of Columbia vacated subpart HHHH on February 8, 2008. Failure to exempt subpart HHHH jeopardizes the appropriate implementation of Montana's mercury control program by imposing dates for certain activities that conflict with deadlines in Montana's Air Quality Permit (MAQP) program. Owners and operators of existing sources filing an application for an MAQP for the purpose of complying with Montana's mercury emission standard for mercury-emitting generating units, found in ARM 17.8.771, will face a

requirement under the now-vacated subpart HHHH to install and certify monitoring equipment by January 1, 2009, before an MAQP imposes deadlines for the same requirement.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., February 12, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, January 5, 2009.